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April 13, 2017

Via ECF

Honorable Denis R. Hurley
United States District Court Judge
Eastern District of New York
100 Federal Plaza
Central Islip, New York 11722

Re: Dole Fresh Fruit Company v. Esposito Brothers, Inc., et al.
Case No. 17-cv-01470 (DRH) (GRB)

Dear Judge Hurley:

This firm is co-counsel with Paul T. Gentile, P.C. to proposed intervenor plaintiff EXP Group, LLC ("EXP"). We submit this letter seeking leave to intervene pursuant to Federal Rule of Civil Procedure 24 upon consent of Plaintiff, or alternatively, requesting a pre-motion conference pursuant to Article 3(A) and (B) of Your Honor's Individual Practice Rules.

Intervention as of right is appropriate where the applicant claims an interest relating to property that is the subject of the action, where the disposition of the action will impair or impede the applicant's ability to protect that interest, and where the applicant is not adequately protected by the existing parties. *See* Fed. R. Civ. P. 24(a)(2); *see also* *Bay Casino, LLC v. M/V Royal Empress*, 199 F.R.D. 464, 467-68 (E.D.N.Y. 1999). Furthermore, a court may permit anyone to intervene who has a claim or defense that shares with the main action a common question of law or fact. *See* Fed. R. Civ. P. 24(b)(1)(B).

Plaintiff's action involves claims arising under the Perishable Agricultural Commodities Act, 7 U.S.C. §§ 499(a), *et seq.* ("PACA") and a trust beneficiary asserting rights to and claims against a PACA trust maintained by defendants. EXP alleges claims in excess of \$396,364 as a PACA trust beneficiary against the same trust *res* and trustees as Plaintiff is pursuing in this action. Accordingly, EXP seeks to intervene in this action by essentially filing mirror claims to Plaintiff to adequately protect its rights under PACA and to share *pro rata* in the proceeds of any PACA trust assets of defendants that this Court may rule exist. Plaintiff and EXP's claims against the trust and defendants involve common questions of law and fact. Intervention in this action by a second PACA creditor claiming to be a beneficiary of the same PACA trust and with the same causes of action against the same defendants, promotes efficiency for all parties with rights regarding the trust at issue. It also prevents potential inconsistent results from multiple courts making determinations as to the same property or rights if EXP were required to file another action before another court in efforts to enforce its rights with respect to the trust and against the defendants.

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Plaintiff, by its attorney, has confirmed consent to EXP intervening in this action, and EXP requests leave to intervene based upon this letter, or alternatively, such further proceedings as directed by Your Honor. Finally, we understand that a preliminary injunction hearing is presently scheduled for April 18, 2017, at 9:30 a.m., and EXP, by counsel, intends to appear and assist at the hearing regarding these matters. In the event that Your Honor would like us to do so, we will e-file EXP's proposed Complaint In Intervention in advance of the upcoming hearing.

Your Honor's assistance is graciously appreciated.

Respectfully submitted,



Jonathan S. Bodner
For the Firm

cc: Plaintiff, c/o Gregory Brown, Esq.
Defendants, c/o Howard Rosenberg, Esq.
Paul T. Gentile, P.C., *Lead Counsel to EXP*